

4(d) Compliance Program Work Plan Version 1210

Clark County has a program of ordinances that respond to statutory mandates surrounding environmental issues. It is important to the citizens and to the county that certification is received from NMFS that our protective ordinances ensure that municipal, residential, commercial and industrial (MRCI) development activities are consistent with the conservation of ESA listed salmonids.

1. **Scoping Screen-** Compare the ordinances of the program to each evaluation consideration posed by NMFS in the 4(d) rule MRCI limit 12 (NMFS, 2000). Determine whether the ordinances protect existing Properly Functioning Conditions (PFC) and whether they set degraded habitat on a path toward PFC. Note that conclusions are not drawn about the degree of impact or protection. Results of this screen will be used to help identify remedies in 3. **Propose Remedies** and to assist in compiling existing regulations into a consolidated, user-friendly environmental ordinance.

Methodology-

- 1.A. Background research and comparative regulatory analysis:
 - 1.A.1. Summarize purpose, applicability and exemptions to applicability of each ordinance.
 - 1.A.2. Cite the specific sections (if any) of ordinances that apply to each MRCI limit evaluation consideration.
 - 1.A.3. By reviewing applicability and cited sections, determine if protections exist and if degraded habitats might improve over time through the use of the ordinance.
 - 1.A.4. Review exemptions to look for potential gaps in coverage.
Estimate size of gaps.
 - 1.A.5. Review cited sections and applicability to look for overlaps in coverage and protections.
- 1.B. Survey design, administration and analysis:
 - 1.B.1. Design a survey instrument to elicit professional opinion regarding the structure and effectiveness of the ordinances under review.
 - 1.B.2. Administer the survey to user county staff, appropriate managers and knowledgeable citizen advisors.
 - 1.B.3. Compile the survey results to draw conclusions about ease of use and effectiveness of each ordinance.

Products-

Product 1.A.: Matrix showing which ordinances pertain to which evaluation considerations. Comment on gaps and overlaps.

Product 1.B.: Survey results and conclusions by ordinance.

2. **Basin Analysis Screen-** Evaluate whether the existing program of ordinances will provide adequate protections for PFC and/or lead to improvement of current functions

as defined sub-basin by sub-basin. Clark County varies significantly across the landscape, from the farmland and prairies of Salmon Creek to the foothills of the Washougal River basin. This variation makes it important to determine what is necessary to sustain habitat-forming processes within each sub-basin.

Methodology-

- 2.A. Determine which natural habitat forming processes are necessary for the long-term survival of listed salmonid species (NMFS, 1999) within each sub-basin.
 - 2.A.1. Choosing the East Fork of the Lewis River, Salmon Creek and Lacamas Creek sub-basins as pilots, review the literature and data available for each.
 - 2.A.2. Based on geomorphic or other reasonable criteria, describe broad reaches (2 to 4) within each sub-basin.
 - 2.A.3. Using narratives and data descriptions drawn from existing information, complete the Bio-physical/Land Use Chart, (BLUC), Appendix 1.
 - 2.A.4. Using the Environmental Baseline Template, (EBT), Appendix 1, describe the environmental baseline of each sub-basin by reach.
 - 2.A.5. Based on the BLUC, establish the relative value to fish of the habitat forming processes described in the EBT.
 - 2.A.6. Using a pathways analysis, identify restorative activities that address any limiting factors to the habitat forming processes causing degraded environmental baseline conditions shown in the EBT. Restorative activities are those which may be reasonably expected to occur during the course of listed species recovery efforts.
 - 2.A.7. Using the EBT and pathways analysis to project trends within the habitat forming processes, predict the environmental baseline presuming completion of the restorative activities.
 - 2.A.8. Comparing the predicted baseline and the relative value to the default measures established by NMFS, determine measures of Properly Functioning Conditions for each of the habitat forming processes described by the EBT. Properly Functioning Conditions are defined by NMFS as the sustained presence of natural habitat forming processes necessary for the survival of the listed species (NMFS, Northwest Region, 1999).
- 2.B. Conduct an analysis of the effects of the program of environmental ordinances as applied to MRCI development on a sub-basin scale.
 - 2.B.1. Using the Effects Analysis Matrix Skeleton, Appendix 2, correlate the PFC measures to the Evaluation Considerations of NMFS' MRCI limit in the 4(d) rule (NMFS, 2000).
 - 2.B.2. For each evaluation consideration and its associated PFC's, within each sub-basin, determine:
 - 1) Will the program, at the site under permit application, prevent degradation of the necessary functions versus the

environmental baseline during and immediately after construction?

- 2) Will the program at the site under application prevent degradation and/or promote progress toward meeting the PFC measures over the long run?
- 3) Will any additional infrastructure that may be necessary in the future to accommodate all the anticipated MRCI development avoid degradation of the necessary functions within the sub-basins?
- 4) Will any environmental baseline changes resulting from all the anticipated MRCI development show improvement toward, or protection of, existing PFC?

2.B.3. Answer each question “yes” or “no”.

2.B.4. Support each answer with narrative backup as appropriate; cite ordinances.

2.C. Identify remedies:

2.C.1. Identify remedies for any questions answered “no”. Remedies may be an amendment to ordinance substance or scope, a new overlay ordinance, a set of implementing guidelines or a combination of the remedies.

Products-

Product 2.A.3.: BLUC by sub-basin

Product 2.A.4.-8.: EBT by sub-basin and reach

Product 2.B.: Effects Analysis Matrix by sub-basin

Product 2.C.: List of remedies referenced to the Effects Analysis Matrices

3. **Propose Remedies-** Program shortcomings and ordinance gaps and overlaps drive the need for program revision.

Methodology-

3.A. Recommend a set of remedies and develop a timeline to implement them.

3.A.1. Using *Products (1.A., 1.B. and 2.C.)*, compile a set of proposed remedies that addresses gaps and overlaps as well as program shortcomings.

3.A.2. Develop an implementation timeline for the proposed remedies. The timeline will indicate when to submit the program of ordinances to NMFS for 4(d) certification. Time is important so remedies proposed must be able to be implemented in the shortest time possible.

3.B. Ground truth these proposals with stakeholders- county staff, advisors, NMFS staff and the BOCC.

3.C. Ensure consistency and effectiveness of implementation of the remedied ordinances.

3.C.1. Develop a set of guidelines for staff to use when implementing ordinances in response to MRCI development applications. These

guidelines will be sub-basin and reach specific. They should respond to the necessary functions identified in *Product (2.A.4.-8.)*.

Products-

Product 3.A.1.: Set of proposed remedies to program shortcomings, gaps and overlaps.

Product 3.A.2.: Remedy implementation timeline.

Product 3.C.: Implementation Guidelines for each ordinance for each sub-basin by reach.

4. **Revised Basin Analysis Screen-** Revising the program drives the need to re-analyze the effects.

Methodology-

- 4.A. Re-run the pilots:

4.A.1 Insert the proposed remedies into the ordinance program and re-run the **Basin Analysis Screen** for the pilot sub-basins.

4.A.2. When all questions are answered “yes” implement remedies according to *Product 3.A.2*. Submit the program of ordinances to NMFS for 4(d) certification when indicated.

Product-

Product 4.A.: Revised Effects Analysis Matrices.

5. **Analyze Remaining Sub-basins.** It may be necessary to analyze the remaining sub-basins for two reasons: First- to assure NMFS of the comprehensive scope of the project; and Second- to develop implementation guidelines across the county.

Methodology-

- 5.A. Replicate the process used on the pilot sub-basins.

5.A.1. Conduct **Basin Analysis Screens** for the remaining sub-basins of the unincorporated county using the remedied program

5.A.2. If any of the answers for any of the questions for any of the evaluation considerations in any of the sub-basins are “no” then propose additional remedies and re-run screens as appropriate.

- 5.B. Ensure consistency and effectiveness of implementation:

5.B.1. Expand *Product 3.C.1.* to include implementing guidelines for the remaining sub-basins by reach.

Products-

Product 5.A.: Environmental Baseline Templates and Effects Analysis Matrices for the remaining sub-basins.

Product 5.B.: Complete set of Implementing Guidelines for all sub-basins.

6. **Plan Implementation and Monitoring-** Evaluation consideration (K) deals with some issues outside the ordinance framework. These include certainty of implementation, funding, reporting and plan review. Response to evaluation consideration (K) therefore requires additional work.

Methodology-

- 6.A. Address certainty of implementation:

- 6.A.1. Report initial progress along the implementation timeline (*Product 3.A.2.*).
- 6.A.2. Include progress statement in annual report.
- 6.B. Address certainty of funding:
 - 6.B.1. Estimate budget requirements for plan operation.
 - 6.B.2. Include budget support in annual reports.
- 6.C. Submit annual reports:
 - 6.C.1. On an annual basis, review and report on all permits issued.
 - 6.C.2. Determine what conditions were placed on the permits and whether those conditions responded to the appropriate Implementation Guidelines.
 - 6.C.3. Determine, on the basis of enforcement reports, whether the permit conditions were adhered to.
 - 6.C.4. Determine, on the basis of site monitoring, whether the permit conditions were effective at responding to the necessary functions.
 - 6.C.5. Recommend changes to implementation guidelines if effectiveness is shown to be inadequate.
- 6.D. Submit five-year reports:
 - 6.D.1. On a five-year basis, re-evaluate the environmental baseline review of each pilot sub-basin to determine changes to the environmental baseline.
 - 6.D.2. Determine if these changes are an improvement over the original baseline.
 - 6.D.3. Recommend changes to the ordinance program in response to any baseline degradation.
 - 6.D.4. Report findings, recommendations and any changed implementation timelines in the five-year report.

Products-

Product 6.C.: Annual report.

Product 6.D.: Five-year report.

7. **Compliance with All Other State and Federal Environmental and Natural resource Laws and Permits-** Evaluation Consideration (L) requires compliance with other environmental regulations.

Methodology-

- 7.A. Survey state and federal regulators to identify applicable regulations.
 - 7.A.1. Certify compliance as appropriate.

Product-

Product 7.A.: Certification of compliance.

8. **County-wide Conclusions and Submission-** Program submittal requirements included in the implementation guidelines (4(d) Rule Implementation Binder, NMFS, 9/00) specify that a general conclusion must be drawn that the program will not

impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC.

Methodology-

- 8.A. Prepare and submit the program of ordinances for 4(d) certification.
 - 8.A.1. On the basis of the matrices, conclude that the program meets the *NMFS Implementation Binder* guidelines.
 - 8.A.2. Prepare a submittal package as described in the Submittal Instructions for the MRCI limit section of the Implementation Binder (NMFS, 2000).
 - 8.A.3. Submit the package for qualification.

Product-

Product 8.A.: Submittal package requesting qualification under the 4(d) MRCI limit for the Clark County program of environmental protecting ordinances.